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13 *Lowe's Home Centers, LLC*

14 **UNITED STAES DISTRICT COURT
DISTRICT OF NEVADA**

15 MAURICE MOREHEAD, AND SHERYL
16 MOREHEAD,

17 Plaintiff,

18 vs.

19 LOWE'S HOME CENTERS, LLC, DOES I
20 THROUGH 20; AND ROE BUSINESS
21 ENTITIES 1-20, INCLUSIVE,

22 Defendants.

23 Case No.: 2:18-cv-01074-RFB-EJY

24 **STIPULATION AND ORDER TO
EXTEND DISCOVERY
(5th Request)**

25 Pursuant to Fed R. Civ. P. 6, Fed. R. Civ. P. 26, LR IA 6-1, LR IA 6-2, LR 7-1, and
26 LR 26-4, the parties stipulate and agree that there is good cause to extend the discovery
27 deadlines in the operative discovery plan [ECF No. 26], as set forth below.

28 **1. Pursuant to LR 26-4(a), the parties stipulate that the following discovery was
completed:**

- 29 • The parties served initial and supplemental disclosures pursuant to Rule 26(a)(1).
- 30 • Lowe's Home Centers, LLC ("Lowes") responded to written discovery served by
31 Plaintiffs.
- 32 • Plaintiff Maurice Morehead responded to written discovery served by Lowes.
- 33 • Lowes served about 66 subpoenas to obtain records from Mr. Morehead's prior and

1 current medical providers and his prior employers.

- 2 • Maurice Morehead underwent a Rule 35 examination with a neuropsychologist and a
- 3 neurosurgeon.
- 4 • The parties designated initial and rebuttal experts.
- 5 • Plaintiffs completed the depositions of Charlotte Leslie, Stacie Ford, Michael White,
- 6 Alnisha Grimes/Bloyer
- 7 • Lowes completed the depositions of Maurice Morehead, Sheryl Morehead, Dr. Gregory
- 8 Douds, Dr. Craig T. Tingey, Dr. Daniel Kokmeyer

9 **2. Pursuant to LR 26-4(b), the parties stipulate that they need to complete the following**
10 **discovery:**

- 11 • Lowes needs to complete the depositions of Maurice Morehead's retained and non-
- 12 retained treating experts, including
 - 13 ○ Jeffrey Gross, M.D.
 - 14 ○ Eric Biesbroeck, M.D.
 - 15 ○ Stuart Kaplan, M.D.
 - 16 ○ Enrico Fazzini, D.O.
 - 17 ○ Avaraham Schweiger, Ph.D.
 - 18 ○ Shawn Lustig
- 19 • Additional discovery as needed if new information is revealed in these remaining
- 20 depositions
- 21 • Any other discovery permitted by the Federal Rules of Civil Procedure, the stipulation
- 22 of the parties, or the order of the court

23 **3. Pursuant to LR 26-4(c), the parties stipulate an extension is needed for the following**
24 **reasons:**

25 This is a personal injury action in which Plaintiff Maurice Morehead is claiming over
26 \$400,000 in past medical specials and over \$1.1 million in future medical expenses (present
27 value). Mr. Morehead claims injuries to his hand, knee, cervical spine, lumbar spine, head,
28 and brain. He has undergone surgeries on the hand, knee, and lumbar spine and claims

1 permanent cognitive deficits.

2 The parties need to complete the depositions of Maurice Morehead's retained experts
3 and non-retained treating physician experts, Jeffery Gross, M.D., Eric Biesbroeck, M.D.,
4 Stuart Kaplan, M.D., Enrico Fazzini, D.O., Avaraham Schweiger, Ph.D., and Shawn Lustig.
5 Dr. Gross was scheduled for deposition in January 2020, but the deposition had to be
6 rescheduled to allow Lowes' attorney to review Dr. Gross's newly prepared but yet to be
7 disclosed expert reports. Dr. Gross's deposition was unable to be rescheduled due to the
8 emergence of the Covid-19 pandemic. Dr. Fazzini's deposition was not taken when he
9 indicated that he would not appear for deposition and provided potential new deposition dates
10 in June 2020. His deposition has not yet been rescheduled due, in part, to the Covid-19.
11 Lowes' attorney also needs to meet and confer with the Moreheads' attorney about Dr.
12 Fazzini's failure to appear for the previously scheduled deposition. The remaining depositions
13 were also cancelled due to the Covid-19 pandemic.

14 The virus outbreak and related stay home orders are impacting the parties' ability to
15 complete these depositions. Dr. Gross is in Southern California, an area combatting a surge in
16 Covid-19 patients and under a stay home order until further notice. *See* Executive Order N-33-
17 20 (March 19, 2020), <https://covid19.ca.gov/img/Executive-Order-N-33-20.pdf> (accessed
18 April 13, 2020). Dr. Fazzini and Dr. Schweiger are in New York, New York, another area
19 battling a surge of Dovid-19 patients and under a stay home order known as the "New York
20 State on PAUSE executive order until at least April 29, 2020. *See* New York State on PAUSE
21 10 Point Plan, <https://coronavirus.health.ny.gov/new-york-state-pause> (accessed April 13,
22 2020). Dr. Kaplan and Mr. Lustig are in Las Vegas, Nevada, a location also under a stay home
23 order. *See* Declaration Of Emergency Directive 010 Stay At Home Order, March 31, 2020,
24 http://gov.nv.gov/News/Emergency_Orders/2020/2020-03-31_-_COVID-19_Declaration_of_Emergency_Directive_010_-_Stay_at_Home_Order/ (accessed April 13,
25 2020). The parties are working to schedule these depositions for remote depositions to the
26 extent remote depositions are possible and practicable in this case. Some depositions, like the
27 deposition of Dr. Schweiger, will need to be taken in person due to the nature of his expert

1 testimony and the expected number of exhibits. While the parties are making every reasonable
2 effort to move discovery forward even considering the coronavirus emergency, they are not
3 able to complete these depositions and remaining discovery before the April 30, 2020
4 discovery deadline. The Covid-19 outbreak constitutes extraordinary and unforeseen
5 circumstances that give rise to good cause to extend the current deadlines.

6 Considering the rapidly escalating and changing events surrounding the Covid-19
7 pandemic, it has taken the parties additional time to evaluate the best approach to completing
8 remaining discovery and to coordinate with service providers regarding options for remote
9 depositions. The parties have, therefore, also demonstrated excusable neglect for the timing of
10 this submission.

11 This extension is made in good faith and will not unreasonably delay the resolution of
12 this action.

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4. Pursuant to LR 26-4(d), the parties stipulate to the following proposed schedule for completing all remaining discovery:

1. Extend the discovery cut-off deadline from 4/30/2020 to 7/31/2020;
 2. Extend the date to file the Interim Status Report from 3/31/20/ to 6/1/2020;
 3. Extend the date to file dispositive motions from 5/29/2020 to 8/31/2020; and
 4. Extend the date to file the Joint Pre-Trial Order from 6/29/2020 to 9/30/2020. If dispositive motions are filed, the joint pretrial order is due thirty (30) days from the entry of the court's ruling on the motions.

5. Fed. R. Civ. P. 26(a)(3) Disclosures must be included in the Joint Pre-Trial Order.

Dated: April 14, 2020. HALL JAFFE & CLAYTON, LLP By: <u>/s/Ashlie L. Surur</u> Steven T. Jaffe, Esq. Nevada Bar No. 7035 Ashlie L. Surur, Esq. Nevada Bar No. 11290 425 Peak Drive Las Vegas, Nevada 89128 <i>Attorney for Lowe's Home Centers, LLC</i>	Dated: April 14, 2020. STUCKI INJURY LAW By: <u>/s/ Kyle A. Stucki</u> Kyle A. Stucki, Esq. Nevada Bar No. 12646 1980 Festival Plaza Dr., Ste. 300 Las Vegas, Nevada 89135 <i>Attorneys for Maurice Morehead & Sheryl Morehead</i>
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ORDER

IT IS SO ORDERED.

Eayna L. Zouchah
UNITED STATES MAGISTRATE JUDGE

DATED: April 14, 2020